



# **The City of Milpitas**

## **Request for Proposal For CONTRACT CITY ATTORNEY SERVICES**

Issued: July 2, 2015

## **SECTION 1**

### **GENERAL INFORMATION**

#### **Objectives**

The City of Milpitas (“the City”) is requesting proposals from qualified law firms to submit proposals for City Attorney Services as described in the Scope of work set forth in this request for Proposals (RFP).

#### **Background**

The City is located near the southern tip of San Francisco Bay, forty-five miles south of San Francisco. The City is the on eastern border of Santa Clara County’s “Silicon Valley.” With a population of approximately 70,000, the City is a progressive community that is an integral part of the high tech Silicon Valley. Incorporated in 1954, the City is a general law city operating under the City Council/City Manager form of government, with approximately 320 employees. The City is financially stable with an annual operating budget in excess of \$100 million. Additional information about the City of Milpitas can be obtained on the City’s website at: <http://www.ci.milpitas.ca.gov>.

On January 4, 2012, the City Council of Milpitas adopted a resolution designating the City of Milpitas as the Successor Agency to the former City of Milpitas Redevelopment Agency, effective February 1, 2012. The Successor Agency received a Finding of Completion from the Department of Finance. The Successor Agency is currently disposing its surplus properties in accordance with the Long Range Property Management Plan.

#### **Issues of Concern**

The City of Milpitas has similar legal issues of concern as other municipalities, with particular concern about the following issues:

- Controlling legal expenses
- Avoiding and mitigating litigation
- Protecting City’s quality of life
- Advising on capital improvement projects and the public contracting process
- Complying with Public Records Requests
- Complying with California Fair Political Practices Commission regulations (including conflict of interest training as required under AB 1234)
- Advising on debt issuance
- Developing appropriate fee structures
- Retaining records
- Updating General Plan
- Increasing revenue diversification and supporting existing businesses
- Communicating with the media and public to achieve a maximum degree of transparency
- Working with staff and Council to achieve the highest professional City processes

### **RFP Contact**

Questions regarding the RFP should be directed to:

City Manager's Office  
City of Milpitas  
455 E. Calaveras Blvd.  
Milpitas, CA 95035  
408-586-3051  
Email: [ccarfp@ci.milpitas.ca.gov](mailto:ccarfp@ci.milpitas.ca.gov)

### **Proposal Due Dates**

An electronic copy of the proposal must be received no later than **5:00 p.m. on Saturday, August 15, 2015**. Proposals are to be sent to: [ccarfp@ci.milpitas.ca.gov](mailto:ccarfp@ci.milpitas.ca.gov).

Proposals should be marked "**City of Milpitas City Attorney RFP.**" Proposals received after 5:00 p.m. on Saturday, August 15, 2015 will be disqualified.

**Anticipated Schedule for Consideration of RFP** *(The City reserves the right to amend the schedule below as necessary).*

<b>Action</b>	<b>Date</b>
Issue RFP	July 2, 2015
RFP circulation	July 2 through August 15, 2015
Proposals due	August 15, 2015, 5:00 p.m.
Complete selection process (including interviews)	August 17 through 28, 2015
Contract award	September 15, 2015
Sign and process contract	September 16, 2015

### **Incurred Costs**

The City is not liable for any costs or expenses incurred in the preparation of a response to this RFP. All costs in preparing and submitting a proposal shall be borne by the proposer.

### **Proposal Withdrawal**

A proposer may withdraw a proposal without prejudice prior to the proposal due date by submitting a written request for withdrawal to the City Manager Office, [ccarfp@ci.milpitas.ca.gov](mailto:ccarfp@ci.milpitas.ca.gov), in which event, the proposal will be unopened and deleted. No proposal received after the time specified or at any place other than that stated in the RFP and notice of the same will be considered.

### **Retention and Use of Proposals**

The City reserves the right to retain all proposals, as well as any reports, data or other material prepared or assembled by a proposer and submitted to City in response to this RFP, and to use any idea in any proposal regardless of whether that proposal is selected.

### **RFP Withdrawal or Modification; No Award**

The City reserves the right to modify or withdraw this RFP at any time. In addition, the City may, for any reason, decide not to award a contract as a result of this RFP.

### **Public Records Act**

Each proposer should be aware that although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the City of Milpitas may not be in a position to establish that a proposal which a proposer submits is or contains a trade secret. A proposer submitting any information that it considers confidential or a trade secret, must label such information as "confidential." If a Public Records Act request is made for any information marked "confidential" by a proposer, the City will provide the proposer with reasonable notice to allow the proposer to seek protection from disclosure by a court of competent jurisdiction. In the event that the proposer directs the City not to disclose the information sought pursuant to a Public Records Act request, the proposer shall indemnify the City against any losses, including reasonable attorney's fees and expert costs, sustained by the City in connection with or any way arising from the non-disclosure of the requested information.

### **Contract Approval by City Council**

An agreement with the successful proposer shall not be binding unless and until it is approved by the City Council of the City of Milpitas and executed by authorized representatives of both parties.

### **Competency and Responsibility**

The City reserves full discretion to determine the competence and responsibility, professionally and/or financially of proposers. Proposers will provide, in a timely manner, any and all information that the City deems necessary to make such decision.

### **Execution of Contract**

The proposer to whom award is made will be expected to execute a written contract with the City immediately after City Council's approval. The City expects the contract to be for a three-year term with options for the City to renew. The contract will be similar in form and substance to the sample professional services contract attached to this RFP as Appendix A. This sample contract is included as an example only and the City reserves the right to make modifications to the sample contract in its sole discretion.

### **Acceptance or Rejection and Negotiation of Proposal**

The City reserves the right to accept or reject any or all proposals, or to select more than one firm for this work as deemed appropriate by the City. After selection by the City, the contents of the submitted proposal will become a contractual obligation. Failure to agree to include the proposal as part of the contractual agreement will result in cancellation of the award. The City reserves the right to negotiate a modification to, or accept any part of the proposal, and may not be obligated in any way to accept those parts that do not meet with the approval of the City. The City also reserves the right to waive non-substantial irregularities in any proposal, and to make an award as the interest of the City may require. Final terms and conditions of the contract, including length, scope of services and compensation will be negotiated at the time of selection and will be subject to the approval of the City Manager and City Council.

### **Affidavit of Non-Collusion**

All proposers shall warrant and covenant that the proposal submitted is not made in the interest of, or on behalf of, any non-disclosed person, partnership, company, association, organization or corporation; that the proposal is genuine and non-collusive or sham; that the proposer has not directly or indirectly colluded, conspired, connived, or agreed with any other proposer or anyone else to put in a sham proposal, or that another person or entity shall refrain from

submitting a proposal under this RFP or otherwise; that the proposer has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix its proposal price or the proposal price of any other proposer, or to fix any overhead, profit, or cost element of the proposal price, or that of any other proposer, or to secure any advantage against the public body awarding the contract or anyone interested in the proposed contract; that all statements contained in the proposal are true; and further, that the proposer has not, directly or indirectly, submitted his or her proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any person, entity, corporation, partnership, company association, organization, proposal depository, or to any member or agent thereof to effectuate a collusive or sham proposal. An affidavit of non-collusion as required by this section shall accompany every proposal submitted in response to this RFP.

### **Equal Opportunity**

The City of Milpitas requires all proposers to comply with equal opportunity policies. The City of Milpitas' programs, services, employment opportunities, and volunteer positions and contracts are open to all persons without regard to race, religion, color, national origin, sex, age, marital status, handicap, or political affiliation.

### **Independent Contractor**

The City Attorney will be an independent contractor. All persons employed by a firm in accordance with a contract resulting from this RFP will be employees of the firm and not the City of Milpitas.

## **SECTION II**

### **SCOPE OF WORK**

#### **Services To Be Provided**

The City Attorney is appointed by and reports to the City Council. The City Attorney is the chief legal counsel for the City of Milpitas and, as such, is responsible for advising on all legal matters. While the City expects that the proposing individual or firm shall have the breadth of experience to serve a full-service municipality and/or the ability to retain the necessary staff in each of the legal disciplines as outlined in the above proposal, it is not the intention of the City to limit prospective respondents to large size law firms. Smaller entities, with the acumen to select outside special counsel to fulfill the needs of the City and also be cognizant of managing costs, are encouraged to respond to this request for proposal.

The following are the primary responsibilities for the legal services the City will require in a City Attorney:

#### **1. General Legal Services**

- Attend all closed, regular and special City Council meetings and other such meetings as may be requested by the City Manager or City Council majority and as needed.
- Conduct office hours at the City Hall three times a week for at least five hours each day, including the day of regular City Council meetings (first and third Tuesday of each month) or as otherwise mutually agreed with the City Manager. In addition to on-site office hours, the City is seeking access to full-time counsel via email and telephone conferences. The expectation is that the City will have access to legal assistance at all times throughout the work week.
- Provide land use and planning legal services at the Planning Commission (second and fourth Wednesday of each month) or as otherwise mutually agreed with the City Manager.
- Provide general legal services, routine legal assistance, advice and consultation to the City Council and City staff relating to the Meyers-Milius-Brown Act, general municipal and public law issues, potential tort liability and risk management.
- Except where conflict of interest rules require otherwise, supervise and coordinate the activities of all other counsel retained by the City or working on behalf of the City.
- Provide legal advice via telephone, email and personal consultations with members of the City Council, City Manager and with City staff upon request of the City Manager.
- Review and/or prepare legal opinions, staff reports, ordinances, resolutions, agreements, contracts, forms, notices, certificates, deeds, leases, and other documents required by the City.
- Perform legal work pertaining to land use issues; including, but not limited to, property transactions (e.g., acquisitions, disposals), public improvements, easements, dedications, and right-of-way vacations.

- Monitor pending and current state and federal legislation and court decisions, as appropriate, and provide written updates on those that have the potential to affect the City. Provide suggested action or changes in operations or procedures to assure compliance.
- Consult with the City Council and City staff as needed, render legal advice and opinions (both oral and written), and perform such other or additional general legal services as may be requested by the City, acting by and through the City Council or the City Manager.
- Enforce City Municipal Code, zoning regulations and building standards through administrative and judicial actions.
- Provide training and guidance with regard to the requirements of the Meyers-Milias-Brown Act, Open Meeting Law (Brown Act –Government Code 54550 et seq, Conflict of Interest (AB1234)), CEQA, the Public Elections Code, the Public Records Act and other legal requirements imposed by statute and common law.
- Advise the Council on municipal government legal matters, including parliamentary procedures for running meetings.
- Promptly return all calls and e-mails from the City Council and City staff.
- Communicate with the press when authorized to do so by the City Council or City Manager.

## 2. Litigation Services

- Represent the City in civil litigation brought on behalf of or against the City, as directed by the City Council.
- Provide litigation services to the City in any and all matters assigned by the City.
- Prosecute misdemeanor and infraction violations of the City Municipal Code.

## 3. Other Specialized Legal Services as Requested

- Provide legal services pertaining to labor, employment, pension law (the City is a member of CalPERS), public retirement systems, and personnel matters.
- Advice regarding taxes, assessments, fees, Proposition 218, and other financial advice.
- Environmental Legal Services other than routine review of negative declarations, environmental impact reports and other project-level environmental documentation.
- Real Estate services, other than routine review of escrow documents, title reports, and contracts of sale.
- Advice regarding insurance coverage matters, such as advice and representation regarding coverage disputes.
- Other specialized services as requested by the City.

**SECTION III**  
**PROPOSAL FORM AND CONTENT**

**Proposal Submittal**

All pages of the proposal must be numbered consecutively. The proposal shall not exceed fifteen (15) pages in length. Resumes and licenses shall not count against this page limit. The proposal must be organized in accordance with the list of proposal contents.

**Proposal Form and Content**

Proposers must include the following items in their proposals addressing the scope of work in Section II. All items must fall within the maximum page count. Proposals and cost schedule shall be valid and binding for ninety (90) days following the proposal due date and will become part of the contract that is negotiated with the City.

A. **Letter of Transmittal**

Include a cover letter signed by a duly authorized representative of the firm. The cover letter must include name, address, telephone number and e-mail address of the Proposer submitting the proposal. In addition, the name, title, address, telephone number, fax number and e-mail address of the person or persons to contact who are authorized to represent the proposer and to whom correspondence should be directed should also be included. Additionally, the cover letter must include the following table containing the requested information:

Name of proposed City Attorney	
Office address for proposed City Attorney	
Monthly retainer amount	
Services included in monthly Retainer (Include estimated weekly office hours on-site in Milpitas)	
<b>Services NOT included in monthly retainer</b>	
Hourly rates for services not included in retainer	
Areas of expertise within your Firm	
References (name, municipality, phone, email)	1.
	2.
	3.



B. Table of Contents

Include a clear identification of the submitted material by section and by page number.

C. Executive Summary

Introduce the proposal and summarize the key provisions of the proposal. Provide a statement describing why the proposer is qualified to perform this work, the name of the individual who would serve as City Attorney, and the proposed fees.

D. Statement of Understanding

Include a detailed statement of understanding of the City Attorney services to be provided. If there are services listed in this RFP that the proposer will not be able to provide, describe those services in this section.

E. Approach to Legal Services

Provide a response to each of the following items:

1. Describe your view of the role of the City Attorney.
2. Describe how you will keep the City informed about the status of litigation and other legal matters.
3. Provide an example of a written communication (not to exceed 5 pages) to a governing body about a legal issue, in which options are explained and a recommendation is given.
4. Describe how you track and manage legal costs so that City legal costs are held to a minimum. Please provide an example.
5. Describe how you would proactively advise the City Council about legal developments or issues of concern, without being asked.
6. Describe how as the City Attorney you would work with the City Manager and staff.
7. Describe how, as the City Attorney, you would work with the Mayor and City Council and participate in City Council and other meetings. Would you describe your style of participation in such meetings as proactive or reactive?
8. How much in excess of the retainer would you expect the City of Milpitas to spend engaging the services of your firm for litigation, special expertise, or other services?
9. Please define the type and unit rates for reimbursement for expenses such as mileage, reproduction of documents, faxed documents, and word processing charges.
10. How do you evaluate the costs/benefits of litigating or settling cases?
11. How would you evaluate whether to use an attorney within your law firm or an attorney from another firm to handle a case, provide expert advice, or provide other needed services? How will fees enter into your judgment of who to use in your role as City Attorney representing the interests of the City of Milpitas?
12. Describe the firm's practices regarding professional development, training, and keeping current in the law and legal matters affecting their clients.

F. Proposed Attorney(s)

Name the person whom you propose to designate as City Attorney, and other proposed support members. Please include the following for each individual:

1. Certificates or licenses, including the date of admission to the State Bar of California;
2. Description of education (including name of educational institutions, degrees conferred, and year of each degree);
3. Professional background and professional associations;
4. Experience with and knowledge of the law relating to general law cities related to land use and planning, environmental law including the California Environmental Quality Act (CEQA), general plans, code enforcements and other related areas of law, administrative law; labor relations/personnel law, and other areas of municipal law;
5. Expertise and training.

G. Background and Capacity

1. Describe your firm's background and history; include number of years in business.
2. Describe your firm's municipal legal services training and experience.
3. Location of office(s) that would serve the City of Milpitas.
4. Types of communications devices that would be used by the firm in communicating with the City of Milpitas (e.g., email, telephone, cell phones, voice mail, conference call numbers, websites, etc.)
5. Staff services available (clerical support, paralegals, other non-attorney staff).
6. Awards, honors or public recognition of you, your firm, or both, concerning the provision of legal services.

H. Expertise of Other Attorneys to Assist the City of Milpitas

1. Indicate the expertise your firm is able to provide the City of Milpitas (e.g., land use, debt issuance, public contracting law, labor, etc.).
2. Provide names and qualifications of attorneys in your firm which would be able to provide such legal services.
3. If you are small firm proposing to provide City Attorney services, please indicate the attorneys you would expect to use on behalf of the City of Milpitas for specific areas of expertise.

I. References

Provide contact information for municipal clients for which services have been provided in the last three years, the time period within which the reference was provided those services and the approximate duration for providing those services (this information will be used in conducting reference checks.) Include the contact person's name, title, agency, phone number and email address.

J. Clients/Potential Conflicts of Interest

1. List all public clients for whom your firm currently provides services under a fee for services basis or on a retainer basis. Indicate the services provided (e.g., City Attorney services, special legal expertise in specific disciplines, etc.). Identify any foreseeable or potential conflicts of interest that could result from such representation and the manner in which you would propose to resolve such conflicts.
2. For the person to be designated as City Attorney, list all public clients that person presently represents as city attorney or general counsel, along with the meeting dates and times for each governing body.
3. List all private clients that could potentially pose a conflict of interest with your representing the City of Milpitas.
4. Identify all situations in the last five years in which you have been adverse as an attorney to public entities, either in litigation or administrative matters.

K. Fee Schedule

The selected City Attorney will be required to provide services under a monthly retainer fee format for regular City Council meetings, special City Council meetings, bi-weekly staff meetings, office hours on site at the City of Milpitas, communications with the City of Milpitas and legal work provided under the retainer. Routine travel expenses would be the responsibility of the law firm.

1. Describe what is included in the retainer (including typical number of office hours on site each week).
2. Provide an hourly rate for all of the individuals who may be working with the City of Milpitas from the firm. In addition, please provide a rate for special legal services.

Provide the retainer fee and rates in a table format.

Define what type of work you would consider to be extra or specialized work which would be billed in addition to basic services. State the hourly rates for the designated city attorney and associates for such specialized services.

L. Additional Information

Any other information that the Proposer feels applicable to the evaluation of the proposal or of their qualification for accomplishing the legal services should be included in this section. You may use this section to address those aspects of your services that distinguish your firm from other firms.

AWARD OF PROPOSAL. Award will be made to the Proposer offering the most advantageous proposal after consideration of all Evaluation Criteria set forth below. The criteria are not listed in any order of preferences. The City Attorney Subcommittee of the City Council will evaluate all proposals received in accordance with the Evaluation Criteria and make recommendation to the full City Council for the award of the contract. The City of Milpitas reserves the right to establish weight factors that will be applied to the criteria depending upon order of importance. Weight factors and evaluation scores will not be released until after award of proposal. The City of Milpitas shall not be obligated to accept the lowest priced proposal, but will make an award in the best interests of the City of Milpitas after all factors have been evaluated.

AWARD EVALUATION CRITERIA. Evaluation Criteria that will be used to evaluate all proposals that are received are listed below:

1. Proposal submission - quality and completeness relative to the description given in the RFP.
2. Proposer's experience - experience as City Attorney for municipal agencies in California.
3. Background and related experience of the specific individuals assigned to serve as City Attorney.
4. Proposer's understanding and knowledge of the City, scope of work, and work to be done.
5. References.
6. Proposed compensation.

The City Attorney Subcommittee may also contact and evaluate the Proposer's references; contact any Proposer to clarify any response; contact any current users of a Proposer's services; solicit information from any available source concerning any aspect of a proposal; and seek and review any other information deemed pertinent to the evaluation process. The evaluation committee shall not be obligated to accept the lowest priced proposal, but shall make an award in the best interests of the City of Milpitas.

Discussions may, at the City of Milpitas's sole option, be conducted with responsible Proposers who submit proposals determined to be reasonably susceptible of being selected for an award. Discussions may be for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Proposers shall be accorded fair and equal treatment with respect to any opportunity for discussion and written revision of proposals. Revisions may be permitted after submissions and before award for obtaining best and final proposals. In conducting discussions, the City of Milpitas will not disclose information derived from proposals submitted by competing Proposers. A Notification of Intent to Award may be sent to any Proposer selected. Award is contingent upon the successful negotiation of final contract terms. Negotiations shall be confidential and not subject to disclosure to competing Proposers unless an agreement is reached. If contract negotiations cannot be concluded successfully, the City of Milpitas may negotiate a contract with the next highest scoring Proposer or withdraw the RFP.

AWARD SELECTION PROCESS. Selection of qualified Proposers will be based the criteria listed below. Additional questions may be asked of Proposers and interviews may be conducted. Proposers will be notified of any additional required information or interviews after the written proposals have been evaluated. Interviews will be held with the most qualified respondents. The recommended proposals will be submitted to the City Council for contract approval. The Proposer selected will enter into a contract with the City of Milpitas.

The following evaluation criteria will be used by the Evaluation Committee to score and rank proposals for a short-list. Short-listed firms may be invited for an interview pursuant to the schedule indicated in this RFP.

EVALUATION CRITERIA	PERCENTAGE
Proposal submission - quality and completeness relative to the description given in the RFP.	10
Proposer's experience - experience and performance on comparable government engagements	20
Background and related experience of the specific individuals assigned to serve as City Attorney	20
Approach to Legal Services	20
References	10
Proposed compensation.	20

The above percentages show the relative importance of individual criterion.

**DOCUMENTS TO BE RETURNED WITH PROPOSAL.** Failure to completely execute and submit the required documents before the Submittal Deadline may render a proposal non-responsive. The documents that must be returned by the Submittal Deadline are attached hereto.

**EXECUTION OF CONTRACT.** Time is of the essence of this contract. The Successful Proposer/Contractor shall execute the contract (in substantially the form provided in this RFP as Appendix A - "Sample Contract"), including but not limited to signing all necessary documents and submitting all required bonds and evidences of insurance, within ten (10) days after personal delivery of the notice or within fifteen (15) days after such notice has been deposited in the United States mail. One copy of the contract will be returned to the Contractor after the City of Milpitas executes the contract. In case of failure of the Contractor to execute and return the contract and all required documents within the time allowed, the City of Milpitas may, at its option, consider that the Proposer has abandoned the contract. After the contract has been executed, including the insurance documents, certificates, and bonds. Proposer agrees to commence work within ten- (10) working days after the date of the Notice to Proceed.

**NON-COLLUSION AFFIDAVIT.** Proposers are required to submit a Non-Collusion Affidavit with their Proposals.

**PROPOSAL SUBMITTAL DEADLINE.** The Proposal Submittal Deadline is ***August 15, 2015 at 5:00 PM PST***. It is the Proposer's responsibility to see that the proposal has sufficient time to be received by the City Manager's Office, [ccarfp@ci.milpitas.ca.gov](mailto:ccarfp@ci.milpitas.ca.gov) before the Proposal Submittal Deadline.

## **SPECIAL PROVISIONS FOR SERVICES**

**BUSINESS LICENSE.** If the scope of work under this bid includes performing services or installation on City of Milpitas property, the SUCCESSFUL BIDDER must have a current City of Milpitas Business License. Inquiries regarding Business License may be directed to (Finance at 408-586-3100). Business Licenses are not required for materials or equipment shipped by U.S. mail or common carrier.

**CONFIDENTIAL OR PROPRIETARY INFORMATION OF THE CITY OF MILPITAS.** Contractor understands and agrees that, in the performance of the contracted work or services or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by the City of Milpitas and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the City of Milpitas. Contractor agrees that all information disclosed by the City of Milpitas to Contractor shall be held in confidence and used only in performance of contracted work or services. Contractor shall exercise the same standard or care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

**DAMAGE.** The contractor shall be held responsible for any breakage, loss of the City of Milpitas's equipment or supplies through negligence of the contractor or his employee while working on the City of Milpitas's premises. The contractor shall be responsible for restoring or replacing any equipment, facilities, etc. so damaged. The contractor shall immediately report to the City of Milpitas any damages to the premises resulting from services performed under this contract. Failure or refusal to restore or replace such damaged property will be a breach of this contract.

**INDEPENDENT CONTRACTOR.** Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by the City of Milpitas under contract. Contractor or any agent or employee of Contractor shall not have employee status with the City of Milpitas, nor be entitled to participate in any plans, arrangements, or distributions by the City of Milpitas pertaining to or in connection with any retirement, health or other benefits that the City of Milpitas may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to: FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor provided same. Nothing in this solicitation nor the contract awarded thereof shall be construed as creating an employment or agency relationship between the City of Milpitas and Contractor or any agent or employee of Contractor. Any terms in the contract awarded from this solicitation referring to direction from the City of Milpitas shall be construed as providing direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. The City of Milpitas does not retain the right to control the means or the method by which Contractor performs work under the contract. It is expressly agreed by Contractor that in the performance of the services required under this contract, Contractor, and any of its subcontractors or employees, shall at all times be considered independent contractors and not agents of the City of Milpitas.

**INDEMNIFICATION.** Contractor shall indemnify, defend with counsel reasonably acceptable to the City of Milpitas, and hold harmless the City of Milpitas and its officials, officers, employees, agents, contractors, consultants, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Contractor or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Contractor shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City of Milpitas or its officers, employees, agents, contractors, consultants, or volunteers and (2) the actions of Contractor or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Contractor to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of Milpitas of insurance certificates and endorsements required under the contract awarded from this solicitation does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause is a material element of the contract and shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply.

**INSURANCE REQUIREMENTS.** Within ten (10) consecutive calendar days of award of contract, Successful Proposer must furnish the City of Milpitas with the Certificates of Insurance proving coverage as specified in **Appendix A- Sample Contract**. Failure to furnish the required certificates within the time allowed will result in forfeiture of the Proposal Security.

**THIS FORM MUST BE PRINTED OUT, COMPLETED AND EMAILED TO THE CITY  
AS PART OF THE PROPOSAL**

**NON-COLLUSION AFFIDAVIT  
City Attorney Services**

State of California  
County of Santa Clara ss.

\_\_\_\_\_  
(Proposer's Name), being first duly sworn,  
deposes and says that he or she is \_\_\_\_\_  
(Position/Title/Owner) of \_\_\_\_\_ (Contractor Name)  
the party making the foregoing proposal that the proposal is not made in the interest of, or on  
behalf of, any undisclosed person, partnership, company, association, organization, or  
corporation; that the proposal is genuine and not collusive or sham; that the proposer has not  
directly or indirectly induced or solicited any other proposer to put in a false or sham proposal,  
and has not directly or indirectly colluded, conspired, connived, or agreed with any proposer or  
anyone else to put in a sham proposal, or that anyone shall refrain from bidding; that the  
proposer has not in any manner, directly or indirectly, sought by agreement, communication, or  
conference with anyone to fix the proposal price of the proposer or any other proposer, or to fix  
any overhead, profit, or cost element of the proposal price, or of that of any other proposer, or to  
secure any advantage against the public body awarding the contract of anyone interested in the  
proposed contract; that all statements contained in the proposal are true; and further, that the  
proposer has not , directly or indirectly, submitted his or her proposal price or any breakdown  
thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will  
not pay, any fee to any corporation, partnership, company association, organization, proposal  
depository, or to any member or agent thereof to effectuate a collusive or sham proposal.

\_\_\_\_\_  
Date

\_\_\_\_\_  
(Signed at (Place)

\_\_\_\_\_  
Proposer Name  
(Person, Firm, Corp.)

\_\_\_\_\_  
Authorized Representative

\_\_\_\_\_  
Address

\_\_\_\_\_  
Representative's Name

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Representative's Title



**THIS FORM MUST BE PRINTED OUT, COMPLETED AND EMAILED TO THE CITY  
AS PART OF THE PROPOSAL**

---

**PROPOSER'S STATEMENT  
REGARDING INSURANCE COVERAGE  
City Attorney Services**

PROPOSER HEREBY CERTIFIES that the Proposer has reviewed and understands the insurance coverage requirements specified in the Request For Proposals for City Attorney Services. Should the Proposer be awarded the contract for the work, Proposer further certifies that the Proposer can meet the specified requirements for insurance, and agrees to name the City of Milpitas as Additional Insured for the work specified.

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Name of Proposer (Person, Firm, or Corporation)

---

Signature of Proposer's Authorized Representative

---

Name & Title of Authorized Representative

---

Date of Signing

**THIS FORM MUST BE PRINTED OUT, COMPLETED AND EMAILED TO THE CITY  
AS PART OF THE PROPOSAL**

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**WORKER'S COMPENSATION INSURANCE CERTIFICATE**  
**City Attorney Services**

The Contractor shall execute the following form as required by the California Labor Code, Sections 1860 and 1861:

I am aware of the provisions of Section 3700 of the Labor Code, which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

---

Name of Proposer (Person, Firm, or Corporation)

---

Signature of Proposer's Authorized Representative

---

Name & Title of Authorized Representative

---

Date of Signing

**THIS FORM MUST BE PRINTED OUT, COMPLETED AND EMAILED TO THE CITY  
AS PART OF THE PROPOSAL**

<b>LIST OF REFERENCES</b>
---------------------------

**Proposer:** \_\_\_\_\_

- |    |   |  |
|----|---|--|
| 1. | <div>_____</div> <div>Name of Agency</div>                  | <div>_____</div> <div>Agency Address</div>         |
|    | <div>_____</div> <div>Contact Name</div>                    | <div>_____</div> <div>Contact Title</div>          |
|    | <div>_____</div> <div>Contact Telephone #</div>             | <div>_____</div> <div>Contact e-mail Address</div> |
|    | <div>_____</div> <div>Contract Term and Dollar Amount</div> | <div>_____</div> <div>Type of Audit Services</div> |
| 2. | <div>_____</div> <div>Name of Agency</div>                  | <div>_____</div> <div>Agency Address</div>         |
|    | <div>_____</div> <div>Contact Name</div>                    | <div>_____</div> <div>Contact Title</div>          |
|    | <div>_____</div> <div>Contact Telephone #</div>             | <div>_____</div> <div>Contact e-mail Address</div> |
|    | <div>_____</div> <div>Contract Term and Dollar Amount</div> | <div>_____</div> <div>Type of Audit Services</div> |
| 3. | <div>_____</div> <div>Name of Agency</div>                  | <div>_____</div> <div>Agency Address</div>         |
|    | <div>_____</div> <div>Contact Name</div>                    | <div>_____</div> <div>Contact Title</div>          |
|    | <div>_____</div> <div>Contact Telephone #</div>             | <div>_____</div> <div>Contact e-mail Address</div> |
|    | <div>_____</div> <div>Contract Term and Dollar Amount</div> | <div>_____</div> <div>Type of Audit Services</div> |

I hereby certify that I have performed the work listed above.

\_\_\_\_\_  
Signature of Proposer (Individual with Authorization to Bind the Firm in Contract)

APPENDIX A  
RFP SAMPLE AGREEMENT

**CONSULTING SERVICES AGREEMENT BETWEEN  
THE CITY OF MILPITAS AND  
[NAME OF CONSULTANT]**

THIS AGREEMENT for consulting services is made by and between the City of Milpitas ("City") and \_\_\_\_\_ ("Consultant") as of \_\_\_\_\_, 2015.

**AGREEMENT**

**Section 1. SERVICES.** Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end on \_\_\_\_\_, the date of completion specified in Exhibit A, and Consultant shall complete all the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8.
- 1.2 **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. Consultant shall prepare all work products required by this Agreement in a substantial, first-class manner and shall conform to the standards of quality normally observed by a person practicing in Consultant's profession.
- 1.3 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. Exhibit A shall name any specific personnel who shall be performing services. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to complete Consultant's obligations hereunder.

**Section 2. COMPENSATION.** City hereby agrees to pay Consultant a guaranteed maximum price not to exceed \$ \_\_\_\_\_ for all services to be performed and reimbursable costs incurred under this Agreement. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Hourly rates for personnel performing services shall be as shown in Exhibit B. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

**2.1 Invoices.** Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred during the billing period. Invoices shall contain the following information:

- Serial identification of bills;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion, if applicable;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder, as well as a separate notice when the total number of hours of work by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours, which shall include an estimate of the time necessary to complete the work described in Exhibit A;
- The Consultant's signature.

**2.2 Monthly Payment.** City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above and is otherwise acceptable to the City to pay Consultant. In the event that an invoice is not acceptable to the City, said invoice shall be returned to Consultant within thirty (30) days of the City's receipt of the invoice with a detailed explanation of the deficiency. City's obligation to pay a returned invoice shall not arise earlier than thirty (30) days after resubmission of the corrected invoice.

**2.3 Total Payment.** City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment. In the event that Consultant identifies additional work outside the scope of services specified in Exhibit A that may be required to complete

the work required under this Agreement, Consultant shall immediately notify the City and shall provide a written not-to-exceed price for performing this additional work.

- 2.4 **Hourly Fees.** Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on Exhibit B.
- 2.5 **Reimbursable Expenses.** Reimbursable expenses are shown on Exhibit B, and shall not exceed (\$ ). Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total not-to-exceed amount of compensation provided under this Agreement.
- 2.6 **Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any other applicable federal or state taxes.
- 2.7 **Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date. The City shall have no obligation to compensate Consultant for work not verified by logs or timesheets.
- 2.8 **Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of a written Notice to Proceed from the City.

**Section 3. FACILITIES AND EQUIPMENT.** Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, cellular telephone, long-distance telephone, or other communication charges, vehicles, and reproduction facilities.

If the performance of the work specified in Exhibit A requires destructive testing or other work within the City's public right-of-way, Consultant, or Consultant's subconsultant, shall obtain an encroachment permit from the City.

**Section 4. INSURANCE REQUIREMENTS.** Before beginning any work under this Agreement, Consultant shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement and shall produce said policies to the City upon demand. The cost of such insurance shall be included in the Consultant's price. Consultant shall not allow

any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

- 4.1 Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the City Attorney. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

**4.2 Commercial General and Automobile Liability Insurance.**

- 4.2.1 General requirements.** Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.
- 4.2.2 Minimum scope of coverage.** Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 ("any auto"). No endorsement shall be attached limiting the coverage.
- 4.2.3 Additional requirements.** Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

- a. City and its officers, employees, agents, contractors, consultants, and volunteers shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, contractors, consultants, or volunteers.
- b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- c. An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, employees, contractors, consultants, and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.
- d. Any failure of CONSULTANT to comply with reporting provisions of the policy shall not affect coverage provided to CITY and its officers, employees, agents, and volunteers.
- e. An endorsement shall state that coverage shall not be suspended, voided, or canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

**4.3 Professional Liability Insurance.** If Consultant shall be performing licensed professional services, Consultant shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) covering the licensed professionals' errors and omissions.

**4.3.1** Any deductible or self-insured retention shall not exceed \$150,000 per claim.

**4.3.2** An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

**4.3.3** The policy must contain a cross liability clause.

**4.3.4** The following provisions shall apply if the professional liability coverages are written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.



- b. Insurance must be maintained and evidence of insurance must be provided for at least three years after completion of the Agreement or the work, unless waived in writing by the City.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. The City shall have the right to exercise, at the Consultant's sole cost and expense, any extended reporting provisions of the policy, if the Consultant cancels or does not renew the coverage.
- d. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this Agreement.

#### **4.4 Requirements for All Policies.**

- 4.4.1 **Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A.
- 4.4.2 **Verification of coverage.** Prior to beginning any work under this Agreement, Consultant shall furnish City with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all required insurance policies at any time.
- 4.4.3 **Subcontractors.** Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.
- 4.4.4 **Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of the City, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, contractors, consultants, and volunteers. The City may condition approval of an increase in deductible or self-insured retention levels with a requirement that Consultant procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to the City.

- 4.4.5 **Notice of Reduction in Coverage.** In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Consultant shall provide written notice to City at Consultant's earliest possible opportunity and in no case later than five days after Consultant is notified of the change in coverage.

**4.5 Remedies.** In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Declare Consultant in material breach of the Agreement and terminate the Agreement.

**4.6 Waiver.** The Risk Manager of the City has the authority to waive or vary any provision of Sections 4.2 through 4.5. Any such waiver or variation shall not be effective unless made in writing.

**Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.** Consultant shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City and its officials, officers, employees, agents, contractors, consultants, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Consultant or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, contractors, consultants, or volunteers and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

**Section 6.**      **STATUS OF CONSULTANT.**

- 6.1      **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3. Otherwise, City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.
- 6.2      **Consultant No Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

**Section 7.**      **LEGAL REQUIREMENTS.**

- 7.1      **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2      **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- 7.3      **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4      **Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions and to perform this Agreement. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid business license from City.
- 7.5      **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this

Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the City or this Agreement.

## **Section 8. TERMINATION AND MODIFICATION.**

- 8.1 Termination.** City may terminate this Agreement at any time and without cause upon written notification to Consultant.

In the event of termination, Consultant shall be entitled to compensation for services performed prior to the effective date of termination as provided in Section 2. City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

- 8.2 Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the City, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

- 8.3 Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.

- 8.4 Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors listed in the Consultant's proposal, without prior written approval of the City.

- 8.5 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.

**8.6 Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, any or all of the following:

**8.6.1** Immediate cancellation of the Agreement;

**8.6.2** Retention of the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement prior to cancellation; and

**8.6.3** Retention of a different consultant at Consultant's cost to complete the work described in Exhibit A not finished by Consultant.

## **Section 9. KEEPING AND STATUS OF RECORDS.**

**9.1 Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City at any time upon demand of the City. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. Failure by Consultant to deliver these documents to the City within the time period specified by the City shall be a material breach of this Agreement. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are preliminary drafts not kept by the City in the ordinary course of business and will not be disclosed to third parties without prior written consent of both parties.

**9.2 Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.

**9.3 Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

## **Section 10 MISCELLANEOUS PROVISIONS.**

**10.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing

party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

- 10.2 Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Santa Clara or in the United States District Court for the Northern District of California.
- 10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 No Implied Waiver of Breach.** The waiver of performance or any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant were an employee, agent, appointee, or official of the City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, may be disqualified from holding public office in the State of California.

Consultant certifies that it has not paid any direct or contingent fee, contribution, donation or consideration of any kind to any firm, organization, or person (other than a bona fide

employee of Consultant) in connection with procuring this Agreement, nor has Consultant agreed to employ or retain any firm, organization, or person in connection with the performance of this Agreement as a condition for obtaining this Agreement.

**10.8 Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

**10.9 Contract Administration.** This Agreement shall be administered by \_\_\_\_\_ who is authorized to act for, and on behalf of, City. All correspondence shall be directed to or through the Contract Administrator or his or her designee.

**10.10 Notices.** Any written notice to Consultant shall be sent to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Any written notice to City shall be sent to:

\_\_\_\_\_  
455 East Calaveras Boulevard  
Milpitas, California 95035

**10.11 Professional Seal.** Where applicable in the determination of the City, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.

**10.12 Integration.** This Agreement, including the exhibits, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

**10.13 Exhibits.** All exhibits referenced in this Agreement are incorporated by reference herein.

CITY OF MILPITAS

CONSULTANT

\_\_\_\_\_  
Thomas C. Williams, City Manager

\_\_\_\_\_  
[Name and Title]

\_\_\_\_\_  
Taxpayer Identification Number

\_\_\_\_\_  
City of Milpitas Business License Number

ATTEST:

\_\_\_\_\_  
Mary Lavelle, City Clerk